IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

ST.Rev..No. 169 of 2007()

TA.387/2005 of S.T.A.T.ADDL.BENCH,ERNAKULAM
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REVISION PETITIONER : ASSESSEE/APPELLANT:

SRI.VIJAYAKUMAR PADAMSHRI,
PROPRIETOR, SWASTHIK SWEETS, M.G.ROAD,
ERNAKULAM.

BY ADV. SRI.E.P.GOVINDAN

RESPONDENT: /REVENUE/RESPONDENT:

STATE OF KERALA REPRESENTED BY SECRETARY
TAXES DEPARTMENT, GOVT. SECRETARIAT,
TRIVANDRUM.

BY SPL.G.P. FOR TAXES SRI V.V.ASHOKAN

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 18/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

S.T. Rev. No.169 of 2007

Dated, this the 18th day of June, 2007

ORDER

H.L. DATTU, CJ.

The assessee , being aggrieved by the orders passed by the Kerala Sales Tax Appellate Tribunal in T.A.No.387/2005 dt. 11.5.2006 for the assessment year 1998-99 is before us in this revision petition. The assessee has raised the following questions of law for our consideration and decision. They are as under:

(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in dismissing the appeal filed by the petitioner?

(ii) Whether, on the facts and circumstances of the case, the Tribunal was justified in holding that the petitioner have not produced any evidences supporting their claim. Has not the Tribunal committed an error in not considering Ann. C FIR and Ann. D report prepared by the approved surveyors?

(iii) Whether, on the facts and in the circumstances of case, the Tribunal was justified in holding that there is no illegality in limiting the exemption at 15% by the first appellate authority instead of 50% allowed by the assessing authority?

(iv) Whether, on the facts and in the circumstances of case, the Tribunal was justified in finding fault with the petitioner in not complying rule 18A of the KGST Rules. Has not the Tribunal committed an error in appreciating the facts of the case as revealed from the assessment records?

2. Admittedly, for claiming exemption from payment of tax under the Act, the assessee had not produced the books of accounts. He had only produced the FIR filed by him before the police authorities to suggest that the books of accounts maintained by him in the regular course of business had been destroyed by fire. The assessing authority taking into consideration the FIR produced by the petitioner and after noticing that there is no mention about the destroyal of books of accounts in the FIR, had proceeded to pass the best judgment assessment denying the claim for exemption made by the assessee.

3. Aggrieved by the said order passed by the assessing authority for the assessment year in question, the assessee had filed an appeal before the first appellate authority. The appellate authority, while disposing of the appeal, had modified the orders passed by the assessing authority. That is how the assessee was before the Tribunal. The Tribunal, after going through the orders passed by the assessing authority as well as the appellate authority, has come to the conclusion that, if for any reason, the assessee was to claim exemption from payment of tax, he necessarily has to produce the books of accounts maintained by him in the regular course of business. He cannot claim exemption from payment of tax by merely putting across the claim that he had lost his books of accounts in a fire accident.

4. Whenever an assessee seeks exemption from payment of tax, the burden is on him to prove the claim. That burden he can discharge by only producing the books of accounts maintained by him in the regular course of business. Since that has not been done under the pretext that the books of accounts had been destroyed in a fire accident, the assessing authority had

rejected the return filed by the assessee and thereafter had proceeded to pass the best judgment assessment. The assessment so made, in our opinion, can never be construed as contrary to the provisions of the Act. Keeping this aspect of the matter in view, the appellate authority as well as the Tribunal had only rejected the claim.

5. In view of the above discussion, the questions of law framed by the assessee require to be answered in the negative, that is, against the assessee and in favour of the revenue. Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

mt/